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13 Attorneys for Defendant GOOGLE INC.,

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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

19 ORACLE AMERICA, INC.,
20 Plaintiff,
21 v.
22 GOOGLE INC.,
23 Defendant.

Case No. 3:10-cv-03561-WHA

DECLARATION OF GREGORY LEONARD IN SUPPORT OF GOOGLE'S OPPOSITION TO ORACLE'S MOTION TO STRIKE PORTIONS OF GREGORY LEONARD'S SUPPLEMENTAL REPORT
Dept.: Courtroom 8, 19th Floor
Judge: Hon. William Alsup

1 I, GREGORY K. LEONARD, declare as follows:

2 1. I have been retained by Google Inc. (“Google”) as an expert in this matter. My
 3 background and qualifications, the terms of my retention, and the documents I have reviewed are
 4 set forth in the report I submitted in this matter on October 24, 2011, and I incorporate them
 5 herein by reference.

6 2. I have reviewed Oracle America, Inc.’s (“Oracle”) Motion to Strike Portions of
 7 Gregory Leonard’s Supplemental Report, dated February 24, 2012. I have also reviewed the
 8 Declaration of Iain M. Cockburn in Support of Oracle America, Inc.’s Motion to Strike Portions
 9 of Gregory Leonard’s Supplemental Report, dated February 24, 2012.

10 3. Counsel for Google asked me to consider Oracle’s argument that the forward
 11 citation analysis contained in my report is flawed because it considers the number of forward
 12 citations to each patent without adjusting for age.

13 4. Contrary to Oracle’s assertion that I did not properly account for the age of
 14 patents in my forward citation analysis, I did, in fact, explicitly control for patent age by
 15 comparing each patent’s forward citation count to the number of forward citations for other
 16 patents in the same technology class and of approximately the same age. Specifically, I
 17 considered patents that were issued within three years before or after the subject patent’s issue
 18 date. The conclusion that I drew from my analysis, outlined in my Supplemental Report, is that
 19 information on forward citations suggests that the ‘104/’205/’720 patents-in-suit are not the three
 20 most valuable patents of the 22 top patents, which is what Dr. Cockburn assumes in determining
 21 the top of his range of apportionment percentages. Rather, these three patents-in-suit appear to
 22 be worse than the middle of the set of 22 patents. This is the same conclusion that results from
 23 my analysis of a two-year and one-year window around each patent’s issue date. I have
 24 performed the same analysis as outlined in my Supplemental Report, but considering patents that
 25 were issued within two years and one year before or after the subject patent’s issue date. If the
 26 size of the window is two years before and after the issue date, the rankings of the
 27 ‘104/’205/’720 patents-in-suit are 9th, 10th, and 16th, for an average ranking of 11.7 out of 22. If
 28 the size of the window is one year before and after the issue date, the rankings of the

‘104/’205/’720 patents-in-suit are 9th, 10th, and 17th, for an average ranking of 12.0 out of 22.

2 5. I have also used an alternative approach to accounting for patent age in my
3 analysis of the top 22 patents by dividing the forward citation count for each patent by the
4 number of years between the date each patent was issued and February 1, 2012. Attached hereto
5 as **Exhibit A** is a revised version of my table that Oracle included as Exhibit C to the Declaration
6 of Beko Reblitz-Richardson in Support of Oracle America, Inc.’s Motion to Strike Portions of
7 Gregory Leonard’s Supplemental Report. This table includes each of the top 22 patent’s issue
8 date, actual citations, age measured in years between the patent’s issue date and February 1,
9 2012, and the number of forward citations per year. Based on the number of forward citations
10 per year, the ‘205 patent, which was originally ranked 10th based on absolute forward citation
11 counts, remains ranked 10th. The ‘104 patent falls from 11th to 13th, and the ‘720 patent rises
12 from its original ranking of 17th to 15th. Overall, these rankings result in an age-adjusted average
13 ranking of 12.7 out of 22.

14 6. Therefore, my initial conclusion that the '104/'205/'720 patents-in-suit are not the
15 three most valuable patents of the 22 top patents and that these three patents are in the middle of
16 the pack of the 22 top patents or lower, remains accurate, as does my ultimate opinion that, only
17 the lower bound of Dr. Cockburn's patent damages range can have any support.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at San Francisco, California on March 2, 2012.

By:

Aug 22d

GREGORY LEONARD

Exhibit A
Age-Adjusted Citations Rankings

| Non-Adjusted Rank (a) | Age-Adjusted Rank (b) | Patent (c) | Issue Date (d) | Actual Citations (e) | Age (Years To 2/1/2012) (f) | Actual Citations/Age (g) (e)/(f) |
|-----------------------------|-----------------------------|------------------|-------------------|----------------------------|-----------------------------------|---|
| 1 | 1 | <u>6,237,141</u> | 5/22/01 | 35 | 10.69 | 3.27 |
| 2 | 4 | <u>5,995,754</u> | 11/30/99 | 31 | 12.17 | 2.55 |
| 3 | 3 | <u>6,513,156</u> | 1/28/03 | 26 | 9.01 | 2.89 |
| 4 | 2 | <u>6,760,907</u> | 7/6/04 | 24 | 7.57 | 3.17 |
| 5 | 7 | <u>5,933,635</u> | 8/3/99 | 23 | 12.49 | 1.84 |
| 6 | 5 | <u>6,704,927</u> | 3/9/04 | 18 | 7.89 | 2.28 |
| 7 | 6 | <u>7,293,267</u> | 11/6/07 | 8 | 4.24 | 1.89 |
| 8 | 9 | <u>6,591,416</u> | 7/8/03 | 6 | 8.56 | 0.70 |
| 9 | 8 | <u>6,996,813</u> | 2/7/06 | 5 | 5.98 | 0.84 |
| 10 | 10 | <u>6,910,205</u> | 6/21/05 | 4 | 6.61 | 0.61 |
| 11 | 11 | <u>6,931,638</u> | 8/16/05 | 3 | 6.46 | 0.46 |
| 11 | 13 | <u>RE38,104</u> | 4/29/03 | 3 | 8.76 | 0.34 |
| 13 | 12 | <u>7,065,755</u> | 6/20/06 | 2 | 5.61 | 0.36 |
| 13 | 14 | <u>7,003,768</u> | 2/21/06 | 2 | 5.94 | 0.34 |
| 13 | 16 | <u>6,601,235</u> | 7/29/03 | 2 | 8.51 | 0.24 |
| 13 | 18 | <u>6,240,547</u> | 5/29/01 | 2 | 10.67 | 0.19 |
| 17 | 15 | <u>7,426,720</u> | 9/16/08 | 1 | 3.38 | 0.30 |
| 17 | 17 | <u>7,124,291</u> | 10/17/06 | 1 | 5.29 | 0.19 |
| 17 | 19 | <u>RE36,204</u> | 4/27/99 | 1 | 12.76 | 0.08 |
| 20 | 20 | <u>7,343,603</u> | 3/11/08 | 0 | 3.89 | 0.00 |
| 20 | 21 | <u>7,421,698</u> | 9/2/08 | 0 | 3.41 | 0.00 |
| 20 | 22 | <u>7,882,198</u> | 2/1/11 | 0 | 1.00 | 0.00 |

Source: United States Patent and Trademark Office, www.uspto.gov. Data downloaded on February 7, 2012.